

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:PEN:PHI:TL-N-941-00
DABreen

date:

to: Charlotte Roe, Chief Case Processing Section
IRS - Philadelphia Service Center
P. O. Box 245
Bensalem, PA 19020
Drop Point 5810

from: Assistant District Counsel, Pennsylvania District, Philadelphia

subject: Form 2555 and Overpayment Interest

This memorandum is in response to an inquiry from Ron Rivelli, Chief, Domestic and International Section. Please forward a copy of this memorandum to Mr. Rivelli.

ISSUE

Whether a return, which is sent to the wrong service center for filing by a taxpayer, is considered "filed" for purposes of determining if the Service must pay overpayment interest under I.R.C. § 6611.

CONCLUSION

No, a tax return is not filed until it is received by the revenue office designated to receive such return.

FACTS

The Philadelphia Service Center processes all income tax returns containing Form 2555, Foreign Earned Income. Instructions to Form 2555 state: "Send your return to the Internal Revenue Service Center, Philadelphia, PA 19255-0207." In spite of these clear instructions, a substantial number of taxpayers mail their returns to other service centers. These service centers forward these returns to the Philadelphia Service Center, because Philadelphia has the expertise in processing and classifying returns with Forms 2555 attached.

A study conducted by the Philadelphia Service Center revealed that an average of 30 days lapsed from the date the return was received at the wrong service center until it was transferred to the Philadelphia Service Center and another 35 days until the Philadelphia Service Center issued the refund--a total of 65 days. Because more than 45 days had elapsed between the date of "filing" and the date the refund was issued, the Service has been paying interest to taxpayers under I.R.C. § 6611(a). See also I.R.C. § 6611(e)(1), which states that no interest shall be allowed on overpayment issued within 45 days of the date a return is filed. Presumably, the Service was paying interest on these overpayments, because the returns are "processable" under I.R.C. § 6611(g), because I.R.C. § 6611(g) does not require that a return be mailed to the correct service center.

LAW AND ANALYSIS

Internal Revenue Code Section 6091(a) authorizes the Secretary to prescribe, by regulation, the place for the filing of any return, declaration, statement, or other document, or copies thereof. Internal Revenue Code Section 6091(b)(1)(A) provides the general rule that a return must be filed in the internal revenue district where the legal residence of the taxpayer is. However, I.R.C. § 6091(b)(1)(B) provides an exception for certain taxpayers and states that returns of these particularized taxpayers shall be made under section 6851(a) or shall be made at such place as the Secretary may by regulations designate. One class of taxpayers who must file where the Secretary designates by regulation is "...persons who claim the benefits of section 911..." I.R.C. § 6091(b)(1)(B)(iii). Persons claim the benefits of I.R.C. § 911 by completing a Form 2555 and attaching it to their tax returns. Clearly, the Secretary has the statutory authority to tell taxpayers who file a Form 2555 with their returns where those returns must be filed. The next question is whether the Secretary has, in fact, done so. We conclude that he has.

Income Tax Regulation Section 1.6091-3 lists income tax returns which must be filed with the Director of International Operations or ...*the director of the service center designated on the return form or in the instructions issued with respect to such form [emphasis added]*. Having been so designated in the instructions to Form 2555, the only service center where a tax return with a Form 2555 can be filed is Philadelphia.

We are unaware of any statutory authority holding that a return sent to the wrong service center for filing by a taxpayer is considered "filed" for purposes of determining if the Service must pay overpayment interest under I.R.C. § 6611. However, in Winnett v. Commissioner, 96 T.C. 802 (1991), the Tax Court held that a return with Form 2555 was not filed for purposes of commencing the running of the statute of limitations until it was received by the Philadelphia Service Center, even though it was initially mailed to, and received by, the Ogden Service Center.

We believe the facts in Winnett are sufficiently on point with the situation raised by Mr. Rivelli to reach a similar conclusion. A tax return containing a Form 2555 is not filed until it is received by the Philadelphia Service Center. Therefore, if a refund is issued within 45 days of the day the Philadelphia Service Center receives the return, no interest shall be allowed on such overpayment.

This concludes our advice and recommendation. If you or Mr. Rivelli have any additional questions, please feel free to call Senior Attorney David A. Breen at 215-597-3442. We are forwarding a copy of this advice to the Assistant Regional Counsel (Tax Litigation) (CC:NER) and to the Office of Assistant Chief Counsel (Field Service) (CC:DOM:FS) for mandatory ten day post review.

JOSEPH M. ABELE
Assistant District Counsel

cc: ARC(TL)NER Corrado
Assistant Chief Counsel
(Field Service)